

REMARKS

This request for withdrawal of the restriction requirement under 37 C.F.R. 1.143 is in response to a restriction requirement and election of species requirement mailed May 30, 2003. Claims 1-35 are pending in Applicant's patent application.

1. Summary of the Restriction Requirement of May 30, 2003

35 claims are pending in Applicant's patent application. In this restriction requirement, the Examiner restricted (I) a semi flexible tubing of FIG. 3 from (II) a coiled tubing of FIG. 27. In addition, the Examiner insisted that Applicant elect exactly 1) what end fitting each end of the transfer line is connected to (PP, LE, standard HE, separation HE, etc) and to 2) also specify whether or not a manifold is present at each end and then to 3) specify exactly how many ports are in all manifolds present in the elected specie and then to 4) specify exactly what end fittings are in each port of each manifold attached to the transfer line.

2. Provisional election

Therefore, Applicant provisionally elects (I) the semi flexible tubing of FIG. 3 having a percussion primer end fitting (FIG. 4) at a first end of the semi flexible tubing and a standard HE end fitting (FIG. 20) at a second end of the semi flexible end fitting, where the first end of the PP end fitting being absent any transfer manifold and the second end with the standard HE end fitting being lodged in a three port manifold, where the other two ports have a standard LE end fitting and a standard HE end fitting respectively. Applicant is making this election with traverse.

Fig. 9
Fig. 10

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3. Applicant's characterization of claims

In paragraph 6 of the restriction requirement mailed May 30, 2003, the Examiner required that Applicant furnish the Examiner a listing of which of the 35 claims reads on Applicant's elected specie. Applicant therefore has the following comments. Applicant submits that claims 1-5, 8-10, 23-26, 29-30 and 33-35 both 1) read on and 2) are generic to Applicant's elected specie.

4. Traversal of the Restriction Requirement

A. The Examiner misunderstands Applicant's invention in the drafting of the May 30, 2003 restriction requirement

Applicant submits that the May 30, 2003 restriction requirement illustrates a misunderstanding of Applicant's invention by the Examiner. In particular, the Examiner seems to believe that the presence or absence of transfer manifolds at ends of transfer lines is an example of *separate embodiments* in Applicant's invention. The Examiner cites, in paragraph 3 of the May 30, 2003 restriction requirement, that Applicant's FIGS. 9, 11, 17, 18, 19, 27 and 32 illustrate transfer lines having end fittings at each end but also being absent of transfer manifolds at both ends to justify his position that the presence or lack of manifolds indicates separate embodiments. The Examiner then concludes that FIGS. 9, 11, 17, 18, 19, 27 and 32 illustrate an *embodiment* where transfer manifolds are not used. The Examiner reasons that if transfer manifolds were present, that such an arrangement would be drawn to an embodiment that is different from the arrangement of FIGS. 9, 11, 17, 18, 19, 27 and 32 where no transfer manifolds are present. Applicant disagrees.

Applicant submits that just because a particular figure does not illustrate a transfer manifold and just because a particular claim does not claim a transfer manifold does not necessarily infer that such a figure or such a claim is drawn to an embodiment that is separate from where transfer manifolds are present or illustrated. Applicant submits HE and LE end fittings are ordinarily installed in manifolds while PP end fittings are not ordinarily installed in manifolds. *Therefore, Applicant submits that the presence or absence of a manifold is dictated by the type of end fitting and is not evidence of a separate embodiment.* The fact that FIGS. 9, 11, 17, 18, 19, 27 and 32 do not illustrate manifolds on the LE or HE end fittings does not imply that these figures are drawn to a separate embodiment than figures showing the manifolds. This is because FIGS. 9, 11, 17, 18, 19, 27 and 32 are drawn to emphasize the end fittings and the transfer line. Applicant did not include the transfer manifolds in these figures because Applicant did not want to cloud the figure with transfer manifolds. Applicant did not choose to not illustrate manifolds in FIGS. 9, 11, 17, 18, 19, 27 and 32 to describe a separate embodiment where transfer manifolds are not used.

Similarly, claims that do not claim the manifolds do not imply that a different embodiment is being claimed than when manifolds are claimed. Instead, claims that do not claim manifolds attached to LE and/or HE end fittings are *generic* to claims that do claim the HE and/or LE end fittings as attached to the manifolds. Applicant submits the presence or absence of manifolds is an indication of broadness and focus of the claim and figure respectively, not an indication of a separate embodiment.

Lines 1, 2, 10 and 11 of page 7 of Applicant's specification teach that HE and LE end fittings are always inserted into transfer manifolds. These portions of Applicant's Summary of the Invention section teach that the end fittings, the transfer line and the transfer manifold are all needed to provide the novel hermetic seal that keeps moisture out and prevents the escape of the exhaust gases. It is to be appreciated that every claim and every figure must not show the transfer manifolds as this would not serve Applicant's interests. Therefore, Applicant submits that a figure or a claim that does not include a transfer manifold does not infer that a separate embodiment is being illustrated or claimed as asserted by the Examiner.

Because the Examiner erroneously treated the presence and absence of transfer manifolds in the restriction requirement of May 30, 2003 as separate embodiments, Applicant submits that it was inappropriate for the Examiner, in the restriction requirement of May 30, 2003, to require the Applicant to elect whether or not a manifold is present at each end fitting. This is because LE and HE end fittings are always inserted into manifolds and PP end fittings are not inserted into manifolds. Inclusion or absence of manifolds is an issue of generic, not separate embodiments.

B. The restriction requirement regarding 1) the identification of the exact type of manifold (2, 3, or 4-port) used and 2) what each port is connected to 1) ignores and destroys Applicant's novel concept and 2) shows a lack of appreciation and a lack of understanding on the part of the Examiner of Applicant's Invention

In the restriction requirement mailed on May 30, 2003, the Examiner, in paragraph 4, required Applicant to elect 1) the number of ports of each manifold and 2) what each port is connected to. Applicant submits that such a requirement 1) destroys Applicant's novel concept and 2) is another lack of understanding and appreciation, on the part of the Examiner of Applicant's invention. The Examiner, in the restriction requirement mailed May 30, 2003, is essentially trying to restrict Applicant's invention to a particular network configuration, similar to restricting "Tinker Toys" to only one configuration out of an unlimited number of possible configurations. However, an essential feature of Applicant's invention is 1) that a hermetic seal is created and 2) the transfer lines can be adapted to many applications. By restricting to a single application, the Examiner ignores and does not appreciate that one of the essential aspects of Applicant's invention is to have a hermetic transfer line that is adaptable to many applications. This hermetic seal 1) keeps moisture from entering in to the deflagrating and/or detonating material to thereby improve the shelf life of the product while 2) preventing gases from escaping during functioning. Preventing the gases from escaping is important when the transfer lines and/or the end fittings are disposed and functioned in an area where people are present. Applicant submits that restricting Applicant's invention to a specific number of ports on each manifold present and what each port in each manifold attaches to shows a lack of appreciation and understanding on the part of the Examiner of Applicant's invention as well as destroys Applicant's novel concept of bringing a hermetic seal to a wide variety of applications.

C. The restriction requirement regarding 1) the identification of the exact type of

manifold (2, 3, or 4-port) used and 2) what each port is connected to is 1) unreasonable, 2) abusive and 3) overreaching on the part of the Examiner

Applicant submits that restricting Applicant's invention to exactly which manifolds are used and to exactly what each port of each manifold is connected to is unreasonable and abusive on the part of the Examiner. Applicant's position that the Examiner is acting unreasonable, abusive and overreaching are echoed in 37 C.F.R. 1.146 which states, "if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application." Applicant submits that restricting Applicant's invention to the 1) exact number of ports of each manifold and 2) exactly what each port in each manifold is connected to violates 37 C.F.R. 1.146, and therefore, must be withdrawn. This is because such a restriction requirement will result in an unlimited number of species, which, Applicant asserts is an unreasonable number of species as per 37 C.F.R. 1.146.

D. The Examiner failed to comply with MPEP 808.02

Applicant traverses the restriction requirement and the election of species requirement of May 30, 2003 for the following reasons. MPEP 808.02 mandates that the Examiner show, by appropriate explanation, one of the following, (A) separate classification of the species, (B) separate status in the art when they are classifiable together, or (C) a different field of search for the species. This is important as a restriction requirement is to be imposed when an undue burden is placed on the Examiner if the patent application is not restricted. It is noted in the restriction of May 30, 2003,

the Examiner failed to show any of (A)-(C). Therefore, the restriction requirement must be withdrawn. In addition, it is noted that the restriction requirement of May 30, 2003, there is no showing of an undue burden on the part of the Examiner if the Examiner was to examine all 35 claims in one single examination. This omission on the part of the Examiner is important as the Examiner wants to restrict Applicant's invention into an unlimited number of narrow patent applications without any showing of justification. Because the restriction requirement of May 30, 2003 lacks justification on the part of the Examiner to restrict Applicant's patent application into unlimited number of minute pieces, the restriction requirement must be withdrawn.

E. 37 C.F.R. 1.141

It is further noted that 37 C.F.R. 1.141 (a) allows more than one specie to be claimed in a single patent application. Therefore, it is not necessary for the Examiner to restrict Applicant's invention into an unlimited number of separate patent applications as was done in the restriction requirement of May 30, 2003.

F. Evidence of a lack of undue burden present

Applicant's invention as filed has 5 independent claims 1, 12, 19, 23 and 33. Applicant submits that 3 of these 5 independent claims, claims 1, 23 and 33 are generic to the elected specie. Because 3 out of 5 of Applicant's independent claims are generic, Applicant submits that the field of search for all 5 of Applicant's independent claims falls within and is coextensive with the search for generic independent claims 1, 23 and 33. Therefore, Applicant submits that there is no undue

burden on the Examiner to examine all 35 claims on the merits in a single examination.


5. Conclusion

Because of 1) the failure of the Examiner to provide information as mandated by MPEP 808.02, because of 2) the Examiner's desire to restrict Applicant's invention into an unreasonable number of species and thus an unreasonable number of patent applications in violation of 37 C.F.R. 1.146, because of 3) a clear misunderstanding of Applicant's invention by the Examiner in the restriction requirement of May 30, 2003, 4) the lack of appreciation the Examiner has for Applicant's invention, 5) because 37 C.F.R. 1.141 allows more than one embodiment to be examined in a single examination, and because 6) the field of search to examine all claims to be similar to the field of search of the elected claims, the restriction requirement of May 30, 2003 must be withdrawn.

A fee of \$110.00 is incurred by filing of a petition for a one month extension of time, set to expire on July 30, 2003. Applicant's check drawn to the order of Commissioner accompanies this Amendment. Should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

If there are any questions, the Examiner is invited to telephone the undersigned attorney at the below listed local telephone number.

Respectfully submitted,


Robert E. Bushnell,
Attorney for the Applicant
Registration No.: 27,774

1522 "K" Street N.W., Suite 300
Washington, D.C. 20005
(202) 408-9040

Folio: P56668
Date: 07/02/03
I.D.: REB/ML